

DISCUSSION

Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district judge's duties in connection with a magistrate judge's report and recommendation. The district judge must "make a *de novo* determination of those portions of the report to which objection is made," and "may accept, reject, or modify, in whole or in part, the finding or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence of timely objection(s), the Court "need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), Advisory Committee Notes (1983); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).


Here, neither party has timely filed objections to Magistrate Judge McCurine's Report and Recommendation. Having reviewed the Report and Recommendation, the Court finds the report is thorough, well reasoned, and contains no clear error. The Court also finds that the Petitioner has failed to demonstrate that the Petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.

CONCLUSION

Accordingly, the Court hereby: (1) **ADOPTS IN FULL** Magistrate Judge McCurine's Report and Recommendation; (2) **DENIES** the Petition on the merits, and (3) **DECLINES** to issue a certificate of appealability because Petitioner has not "made a substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253(c)(2).¹

IT IS SO ORDERED.

DATED: January 3, 2013



Hon. Anthony J. Battaglia
U.S. District Judge

¹ A certificate of appealability is appropriate only where the petitioner makes "a substantial showing of the denial of a constitutional right." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Under this standard, the petitioner must demonstrate that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. 28 U.S.C. § 2253; *Slack v. McDaniel*, 529 U.S. 473, 474 (2000).